

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

March 16, 2010

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Deputy Attorney General
Department of Justice
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RE: *State v. Craig Zebroski*
ID# 9604017809

Upon Defendant's Motion for Recusal - *DENIED*

Dear Counsel:

This responds to Defendant's March 11, 2010 Motion for Recusal. Presently, this capital murder case is here on remand, in connection with Defendant's second motion for postconviction relief. Under the remand, the court must more specifically address Defendant's Superior Court Criminal Rule 61(i)(2) and (4)

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claims, especially in light of *Smith v. Spisak*,¹ *Outten v. Kearney*,² and *Anker v. Wesley*.³

The motion is based entirely on the court's initial assessment of Defendant's claim. In pertinent part, the court held:

[I]f Defendant presented something truly striking, that would be one thing. Failing that, however, Defendant invites an endless series of motions that mostly second-guess previous motions.

According to Defendant:

The Court's initial assessment of Zebroski's claims and evidence could lead a reasonably well informed observer who assesses all the facts and circumstances to conclude that the Court, without the benefit of an evidentiary hearing, has pre-determined the merits of Zebroski's claims and whether those claims meet the 'interest of justice' standard articulated in *Weedon v. State* and/or the 'manifest injustice' standard in Rule 61(i)(5).

¹--- U.S. ----, 130 S.Ct. 676, --- L.Ed.2d ---- (2010).

²464 F.3d 401 (3d Cir. 2006).

³2009 WL 4030730 (D. Del. Nov. 18, 2009).

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Although it was in the Supreme Court's power to direct that another judge be assigned to the remand, and there is precedent for that,⁴ the remand does not call for reassignment. That undermines Defendant's claim that "a reasonably well informed observer" could conclude that the court is not impartial.

Actually, the assigned judge has no personal interest in this case, whatsoever, and none is alleged. An objective observer would appreciate that the assigned judge's knowledge and impressions of this case come entirely from having presided over the trial and postconviction relief proceedings. An objective observer would conclude, correctly, that no other judge is in a better position to consider the parties' claims. I am satisfied that, taking the remand and the reasons for it into account, an objective observer would prefer that the original judge address the remand rather than have another judge attempt to master this case's fourteen year history.

For the foregoing reasons, Defendant's March 11, 2010 Motion for Recusal is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

FSS: mes
cc: Prothonotary (Criminal)

⁴See, e.g., *Garden v. State*, 2009 WL 2859183, at *2 (Del. Supr. Sept. 4, 2009); *Jones v. State*, 938 A.2d 626, 637 (Del. 2007); *Crosby v. State*, 824 A.2d 894, 913-14 (Del. 2003); *Stevenson v. State*, 782 A.2d 249, 251 (Del. 2001). Cf. *State v. Charbonneau*, 2006 WL 2588151, at *10-11 (Del. Super. Sept. 8, 2006) (Stokes, J.).